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Thomas E. Brown

Decatur, GA

OFFICE OF GENERAL
COUNSEL
Mr. Sean Levitt
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 6803

Dear Mr. Lev:

On Monday, April 14, 2014, we received your letter forwarding a complaint filed with the FEC by Mr. Joe Beasley against the Citizens 4 Thomas Brown Exploratory Committee. Please accept this communiqué as our written response to allegations made in said complaint by Mr. Beasley. Although Mr. Beasley, a community activist, is not a resident of the Forth District, we appreciate his time and attention to this matter.

**COMPLAINT: UNTIMELY FEC FILING OF STATEMENT OF CANDIDACY AND
STATEMENT OF ORGANIZATION:**

RESPONSE: When determining the appropriate time to file the Statement of Candidacy and Statement of Organization, our exploratory committee relied on the 2011 Federal Election Commission Campaign Guide, page 3, which reads in part, "An 'exploratory committee' or 'testing-the-waters-committee' is not considered a political committee and does not have to register or file reports..." We announced the establishment of an "Exploratory Committee" July 17, 2013 and we mailed to the FEC the Statement of Candidacy and Statement of Organization on September 12, 2013, when I decided to become a candidate. Between July 17 and September 15, 2013, the exploratory committee was at all times operating in the "Testing the Waters" mode. Because of this status, we do not believe that we violated any FEC rules regarding filing of Statements of Organization and Candidacy.

**COMPLAINT: PAYMENT TO POLITICAL POLLING FIRM HEG IN JANUARY AND
FEBRUARY 2013 FROM THOMAS BROWN FOR SHERIFF ACCOUNT:**

RESPONSE: This item in Mr. Beasley's complaint is based upon the erroneous assumption that I commissioned a poll to gauge my popularity and name recognition throughout the Fourth District, which includes Gwinnett, Rockdale and Newton counties. At the time of the subject poll I was a DeKalb County elected official and said poll was conducted only within DeKalb County and only for my own political purposes within my county. I paid for the subject poll in the belief that I was free to use funds from my Sheriff's campaign account for

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the purpose of assessing my visibility and approval rating within DeKalb County.

COMPLAINT: THAT OUR FEC FILING SHOULD HAVE OCCURRED ON OR BEFORE JULY 17, 2013

RESPONSE: Mr. Beasley is basing this complaint completely on an erroneous item in a television news report the day I announced the formation of my exploratory committee. At that announcement I made it very clear that I was exploring the possibility of running for Congress and did not express or imply that I had decided to become a candidate. When a news report of my announcement aired on a local television station, the reporter cited the amount of money on the incumbent Congressman's campaign fund and mistakenly compared it to the funds I had on my previous Sheriff's campaign account, which he described erroneously as money I already had for a possible run for Congress. At the time of the press conference, however, I had no money on hand to start my "testing the water" effort.

COMPLAINT: BILLBOARD EXPENDITURE NOT REPORTED AND NOT ATTRIBUTED TO ANY INDEPENDENT COMMITTEE:

RESPONSE: Late last summer, Mr. Jay Barksdale, an executive with an automobile dealership in Rockdale County, heard about the possibility that I would seek higher office and approached me about making available to my possible campaign a billboard that he owned. Fully aware of the FEC requirements about in-kind contributions, I told him that, if I decided to become a candidate, I would accept his offer.

Mr. Barksdale, entirely on his own, with no request from me or the exploratory committee, placed the name "Tom Brown" on his billboard with no indication as to who Tom Brown was or that Tom Brown was running for any elected position. My position in this matter is that the owner of the billboard can place whatever he desires on his billboard and to deny him otherwise would be a violation of his first amendment right to freedom of speech. However since I have announced formally my candidacy, I have accepted the billboard as an in-kind contribution and have so noted on my campaign disclosure statements.

COMPLAINT: ONGOING AND CONTINUOUS VIOLATIONS OF THE DISCLAIMER RULE ON CAMPAIGN PRINTED MATERIAL

I understand that all materials that I purchased using personal rather than campaign funds were not required to display the "Paid for by" disclaimer. However, we have amended our disclosures to account for all other in-kind contributions in the way of signs and t-shirts used

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in the very early stages of our campaign. As of now, all other materials and t-shirts display the required disclaimer. As this was an oversight from the individuals who donated the resources, we thank Mr. Beasley for bringing it to our attention through his complaint to the FEC.

If you desire additional information, please do not hesitate to contact me.

Respectfully,

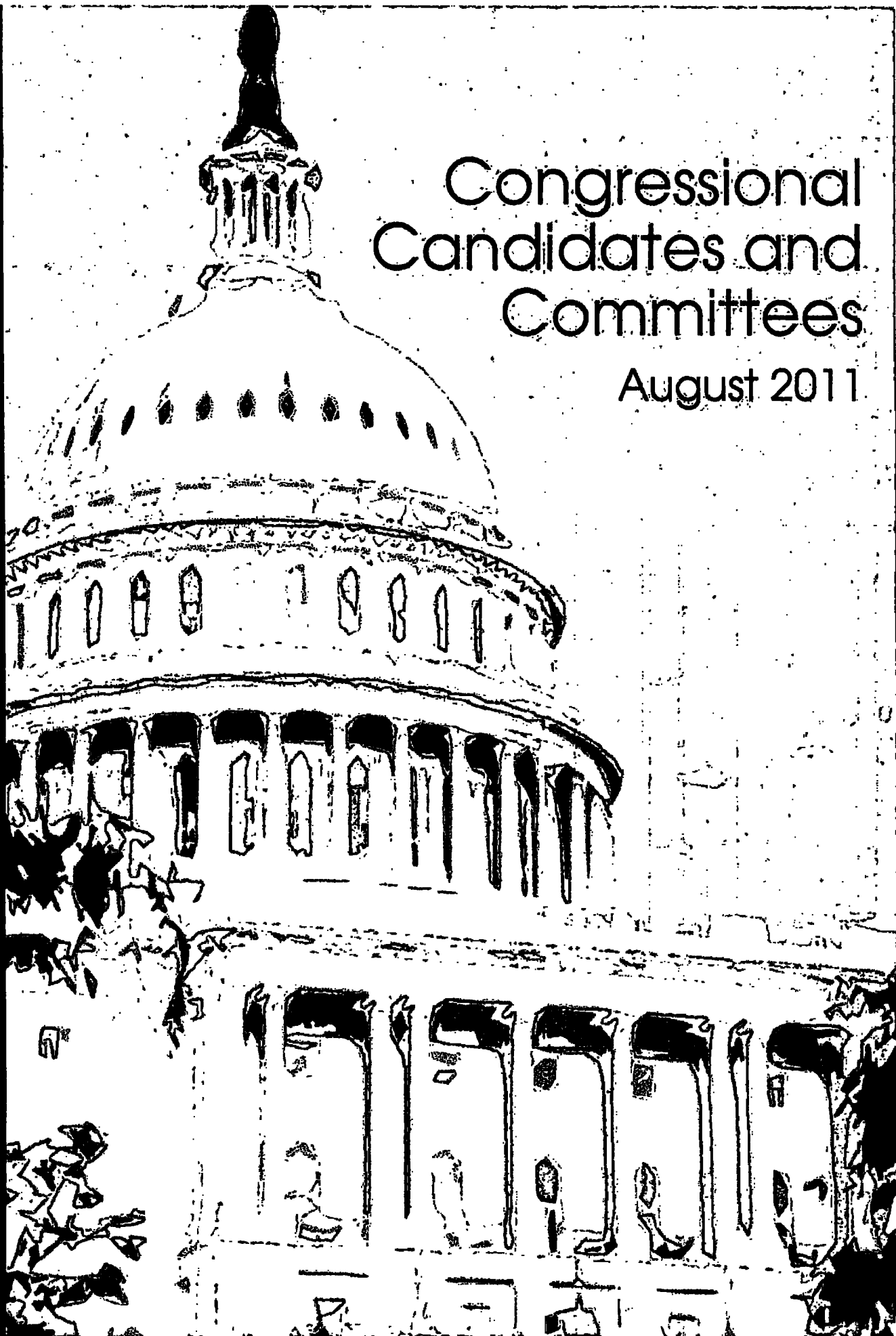

Thomas Brown

Candidate for the 4th Congressional District of Georgia

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Congressional Candidates and Committees

August 2011



CHAPTER I

Testing the Waters

Before deciding to campaign for federal office, an individual may first want to “test the waters”—that is, explore the feasibility of becoming a candidate. For example, the individual may want to travel around the state or district to see if there is sufficient support for his candidacy. An individual who merely conducts selected testing the waters activities that fall within the exemptions in FEC regulations that are discussed in Section I below (but does not campaign for office) does not have to register or report as a candidate even if the individual raises or spends more than \$5,000 on those activities (i.e., the dollar threshold that would normally trigger candidate registration (which is discussed in Chapter 2)). Nevertheless, the individual must comply with the contribution limits and prohibitions. 100.72(a) and 100.131(a); see also Advisory Opinion (AO) 1985-40.

Once an individual begins to campaign or decides to become a candidate, funds that were raised or spent to test the waters apply to the \$5,000 threshold for qualifying as a candidate. 100.72(a) and 100.131(a). Once that threshold is exceeded, the individual must register with the FEC (candidates for the House of Representatives)¹ or the Secretary of the Senate (candidates for the Senate), and begin to file reports (including in the first report all activity that occurred prior to reaching the \$5,000 threshold), as discussed in Chapter 2.

I. Testing the Waters vs. Campaigning

Testing the Waters

An individual may conduct a variety of activities to test the waters. Examples of permissible testing-the-waters activities include polling, travel and telephone calls undertaken to determine whether the individual should become a candidate. 100.72(a) and 100.131(a).

Campaigning

Certain activities, however, indicate that the individual has decided to become a candidate and is no longer testing the waters. In that case, once the individual has raised or spent more than \$5,000, he or she must register as a candidate. Note that, when an individual decides to run for office, funds that were raised and spent to test the waters apply to the \$5,000 threshold.

Campaigning (as opposed to testing the waters) is apparent, for example, when individuals:

- Make or authorize statements that refer to themselves as candidates (“Smith in 2012” or “Smith for Senate”);
- Use general public political advertising to publicize their intention to campaign;
- Raise more money than what is reasonably needed to test the waters or amass funds (seed money) to be used after candidacy is established;
- Conduct activities over a protracted period of time or shortly before the election; or
- Take action to qualify for the ballot.

100.72(b) and 100.131(b).

¹ The same guidance for “testing the waters” applies to individuals testing the waters for a Presidential candidacy. Once the threshold is exceeded, such individuals must register their candidacy with the FEC.

Also, once an individual files FEC Form 2, Statement of Candidacy, he or she is no longer considered to be "testing the waters" and must file FEC Form 1 (and subsequently file financial reports) under the rules described in Chapter 2, "Starting the Campaign." AO 1979-51.

2. Contribution Limits and Prohibitions

Funds raised to test the waters are subject to the Act's contribution limits. Moreover, the individual who is testing the waters may not accept funds from prohibited sources. 100.72(a) and 100.131(a).

Limits

Keep in mind that contribution limits apply to all the support given to an individual who is testing the waters, even donations from a family member or friend. (See the chart on contribution limits in Chapter 4.) The limits apply, for example, to:

- Gifts of money, goods and services;
- Loans (except bank loans);
- Certain staff advances until repaid (see Chapter 3 for more information on staff advances);
- Endorsements and guarantees of bank loans; and
- Funds given or personally loaned to the individual to pay for his or her living expenses during the testing-the-waters period (AO 1978-40). 100.52(a).

See Chapter 4 for more information on contribution limits.

Prohibitions

In observing the law's prohibitions, the individual may not accept money from:

- Labor organizations (although funds from a labor separate segregated fund—also called a PAC—are permissible);
- Corporations, including nonprofit corporations (although funds from a corporate separate segregated fund—also called a PAC—are permissible);

- Foreign nationals; or
- Federal government contractors.

See Chapter 5 for more information on contribution prohibitions.

3. Recordkeeping and Accounting

Recordkeeping

An individual who tests the waters must keep financial records. If he or she later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures. 101.3. See Chapter 11 for more information on recordkeeping.

Separate Bank Account

Another consideration, though not a requirement, is the segregation of testing-the-waters funds from personal funds. It is advisable for the individual to set up a separate bank account for the deposit of receipts and the payment of expenses. If the individual later becomes a candidate, a campaign account must be established to keep the campaign funds separate from the individual's personal funds. 102.10, 102.15, 103.2 and 103.3(a).

4. Example

Mr. Jones is interested in running for a seat in the U.S. House of Representatives but is unsure whether he has enough support within his district to make a successful bid. He therefore accepts up to \$2,500 from each of several relatives and friends and uses the money to pay for an opinion poll. He sees that good records are kept on the money raised and spent in his testing-the-waters effort. The poll results indicate good name recognition in the community, and Jones decides to run.

By making this decision, Jones has crossed the line from testing the waters to campaigning. The funds he raised earlier now automatically become contributions and the funds he spent, including